

1 MS. SCHMELTZER: No objection.

2 JUDGE FRYSIAK: Received.

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(The document referred to,
having been previously marked
for identification as Shurberg
Exhibit 123, was received in
evidence.)

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MR. COLE: Thank you. Next, I have a one page
document which is a letter on WHCT 18 letterhead, dated
February 26, 1987 addressed to Kirk Dodd from Mr. Ramirez.
And I'd like that marked as Shurberg 124.

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JUDGE FRYSIAK: It may be marked.

(The document referred to was
marked for identification as
Shurberg Exhibit 124.)

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MR. COLE: Thank you. And this was received into
evidence in the bankruptcy proceeding as Exhibit Number 107.
And on that basis, I offer it into evidence here.

22

23

MS. SCHMELTZER: No objection.

24

25

JUDGE FRYSIAK: Received.

(The document referred to,
having been previously marked

1 for identification as Shurberg
2 Exhibit 124, was received in
3 evidence.)

4 MR. COLE: Next, I have a one-page document which
5 is a letter on WHCT 18 letterhead, dated February 26, 1987
6 addressed to Murray Oaken from Mr. Ramirez.

7 I'd like that marked for identification as
8 Shurberg 125.

9 JUDGE FRYSIK: It may be marked.

10 (The document referred to was
11 marked for identification as
12 Shurberg Exhibit 125.)

13 MR. COLE: Thank you. And this was received in
14 the bankruptcy proceeding as Exhibit Number 108. And on
15 that basis, I offer it here.

16 MS. SCHMELTZER: No objection.

17 JUDGE FRYSIK: Received.

18 (The document referred to,
19 having been previously marked
20 for identification as Shurberg
21 Exhibit 125, was received in
22 evidence.)

23 MR. COLE: Thank you. Next, I have -- I would
24 like marked for identification as Shurberg 126 a one-page
25 letter on WHCT 18 letterhead, dated February 26, 1987

1 addressed to Howard Baldwin from Mr. Ramirez.

2 And I would like that marked, please, as Shurberg
3 126.

4 JUDGE FRYSIAK: It may be marked.

5

6 (The document referred to was
7 marked for identification as
8 Shurberg Exhibit 126.)

9 MR. COLE: And this was received in the bankruptcy
10 proceeding as Exhibit Number 109. And on that basis, I
11 offer it into evidence here.

12 MS. SCHMELTZER: No objection.

13 JUDGE FRYSIAK: Received.

14 (The document referred to,
15 having been previously marked
16 for identification as Shurberg
17 Exhibit 126, was received in
18 evidence.)

19 MR. COLE: Thank you, Your Honor. Next, I would
20 like to have marked for identification as Shurberg 127, a
21 one-page letter on WHCT 18 letterhead, dated March 5, 1987
22 addressed to Fred Boling from Mr. Ramirez.

23 And that would be Shurberg 127.

24 JUDGE FRYSIAK: It may be so marked.

25 (The document referred to was

1 marked for identification as
2 Shurberg Exhibit 127.)

3 MR. COLE: Thank you. And this was received into
4 the bankruptcy proceeding as Exhibit Number 112. And on
5 that basis, I offer it here.

6 MS. SCHMELTZER: No objection.

7 JUDGE FRYSIK: Received.

8 (The document referred to,
9 having been previously marked
10 for identification as Shurberg
11 Exhibit 127, was received in
12 evidence.)

13 MR. COLE: Thank you. Next, I would like marked
14 for identification as Shurberg Exhibit 128, a two-page
15 document, the first page of which is a one-page letter on
16 WHCT 18 letterhead, dated March 5, 1987 to Mr. Sostek from
17 Mr. Ramirez. And accompanying it is a one-page memorandum
18 addressed to Mike Kibby and Richard Ramirez from Mary Rose
19 McHugh.

20 I'd like this two-page document identified as
21 Shurberg 128, please.

22 JUDGE FRYSIK: It may be so marked.

23 (The document referred to was
24 marked for identification as
25 Shurberg Exhibit 128.)

1 MR. COLE: Thank you. And this was received into
2 evidence in the bankruptcy proceeding as Exhibit Number 113.
3 And on that basis, I offer it here.

4 MS. SCHMELTZER: No objection.

5 JUDGE FRYSIK: Received.

6 (The document referred to,
7 having been previously marked
8 for identification as Shurberg
9 Exhibit 128, was received in
10 evidence.)

11 MR. COLE: Thank you. Next, I would like
12 identified for the record as Shurberg 129, a one-page
13 document which is a letter on WHCT 18 letterhead, dated
14 March 11, 1987 to Sara J. Rutenberg from Mr. Ramirez.

15 And I'd like that marked as Shurberg 129, please.

16 JUDGE FRYSIK: It may be so marked.

17 (The document referred to was
18 marked for identification as
19 Shurberg Exhibit 129.)

20 MR. COLE: This was received into evidence in the
21 bankruptcy proceeding as Exhibit Number 114. And on that
22 basis, I offer it here.

23 MS. SCHMELTZER: No objection.

24 JUDGE FRYSIK: Received.

25 (The document referred to,

1 having been previously marked
2 for identification as Shurberg
3 Exhibit 129, was received in
4 evidence.)

5 MR. COLE: Thank you. Next, I would like to have
6 identified as Shurberg Exhibit 130, a one-page document
7 which is a letter on WHCT 18 letterhead, dated June 8, 1987
8 addressed to Mr. Sostek from Mr. Ramirez.

9 And that would be Shurberg 130.

10 JUDGE FRYSIK: It may be so marked.

11 (The document referred to was
12 marked for identification as
13 Shurberg Exhibit 130.)

14 MR. COLE: Thank you. This was received in the
15 bankruptcy proceeding as Exhibit Number 120. And on that
16 basis, I offer it here.

17 MS. SCHMELTZER: No objection.

18 JUDGE FRYSIK: Received.

19 (The document referred to,
20 having been previously marked
21 for identification as Shurberg
22 Exhibit 130, was received in
23 evidence.)

24 MR. COLE: Thank you. Next, I have a one-page
25 document which I'd like identified as Shurberg 131. It is a

1 letter on WHCT 18 letterhead, dated June 8, 1987 addressed
2 to Mr. Boling from Mr. Ramirez.

3 And I would like that identified as Shurberg 131,
4 please.

5 JUDGE FRYSIK: It may be so marked.

6 (The document referred to was
7 marked for identification as
8 Shurberg Exhibit 131.)

9 MR. COLE: Thank you. And this was received into
10 evidence in the bankruptcy proceeding as Exhibit Number 121.
11 And on that basis, I offer it here.

12 MS. SCHMELTZER: No objection.

13 JUDGE FRYSIK: Received.

14 (The document referred to,
15 having been previously marked
16 for identification as Shurberg
17 Exhibit 131, was received in
18 evidence.)

19 MR. COLE: Thank you. Next, I would like
20 identified for the record as Shurberg 132, a one-page
21 document which is a letter on WHCT 18 letterhead, dated
22 August 17, 1987 addressed to Mr. D.B. Hasiotis from Mr.
23 Ramirez.

24 And I'd like that identified as Shurberg 132,
25 please.

1 JUDGE FRYSIK: It may be so marked.

2 (The document referred to was
3 marked for identification as
4 Shurberg Exhibit 132.)

5 MR. COLE: And that was received into evidence in
6 the bankruptcy proceeding as Exhibit Number 123. And on
7 that basis, I offer it here.

8 MS. SCHMELTZER: There's some handwriting on
9 here -- some --

10 MR. COLE: The handwriting, I think, was part of
11 the original exhibit but I don't know, and I wasn't planning
12 on using it. But I believe it was part of the original
13 exhibit. It appears to be an indication of what the
14 enclosures were.

15 MS. SCHMELTZER: No objection, Your Honor.

16 JUDGE FRYSIK: Received.

17 (The document referred to,
18 having been previously marked
19 for identification as Shurberg
20 Exhibit 132, was received in
21 evidence.)

22 MR. COLE: Thank you, Your Honor. Next, I have a
23 55-page document which I'd like identified as Shurberg
24 Exhibit 133. It consists of a one-page letter on the
25 letterhead of Richard P. Ramirez, dated November 4, 1987

1 addressed to Herb and Fred. It does not bear a typed
2 signature, but it does appear to bear Mr. Ramirez's
3 signature, Rich, at the bottom. And then, it is accompanied
4 by various informational materials concerning the station
5 performance and other matters relating to programming on the
6 station.

7 I'd like the entire 55-page document identified as
8 Shurberg 133.

9 JUDGE FRYSIAK: It may be so marked.

10 (The document referred to was
11 marked for identification as
12 Shurberg Exhibit 133.)

13 MR. COLE: And I will withhold offer of that,
14 pending a witness.

15 Next, I would like to have identified as Shurberg
16 134, a four-page document consisting of a one-page cover
17 letter on the letterhead of Baker & Hostetler, dated August
18 8, 1988 addressed to Fred Boling and signed by Mr. Hart.
19 And the second page of this item is a bill sent to Mr.
20 Boling, dated August 8, 1988. And the third and fourth
21 pages are a letter from Astroline Corporation, dated July 8,
22 1988 and addressed to Baker & Hostetler.

23 I'd like this four-page document identified as
24 Shurberg 134.

25 JUDGE FRYSIAK: It may be so marked.

1 (The document referred to was
2 marked for identification as
3 Shurberg Exhibit 134.)

4 MR. COLE: And I will withhold offer on this
5 pending a witness.

6 Next, I have a one-page document. It's a
7 memorandum addressed to Thomas Hart from David Dudley, dated
8 August 2, 1988.

9 I'd like that identified for the record as
10 Shurberg 135.

11 JUDGE FRYSIK: It may be marked.

12 (The document referred to was
13 marked for identification as
14 Shurberg Exhibit 135.)

15 MR. COLE: And I will withhold offer of that
16 pending a witness.

17 Next, I have a -- I'd like to have marked for
18 identification as Shurberg 136, a one-page document, dated
19 August 11, 1988. It appears to be a draft letter of some
20 form. It reads, "Dear" and there is a blank. And then
21 there's some text. It includes a signature block which is
22 unsigned for Richard P. Ramirez. And at the top in
23 handwriting it is written "Herb" and "Fred."

24 I'd like to have this marked as Shurberg Exhibit
25 136.

1 JUDGE FRYSIAK: It may be so marked.

2 (The document referred to was
3 marked for identification as
4 Shurberg Exhibit 136.)

5 MR. COLE: This was received into evidence in the
6 bankruptcy proceeding as Exhibit Number 133. And on that
7 basis, I offer it here.

8 MS. SCHMELTZER: No objection.

9 JUDGE FRYSIAK: Received.

10 (The document referred to,
11 having been previously marked
12 for identification as Shurberg
13 Exhibit 136, was received in
14 evidence.)

15 MR. COLE: Next, I would like marked for
16 identification, a four-page document which is a letter dated
17 November 16, 1984 addressed to Mr. Hart from Collier,
18 Shannon, Real & Scott and signed on the fourth page by Susan
19 D. Harrison and Elizabeth J. Swanson, apparently on behalf
20 of Frazier, Gross, & Kadlec, Inc.

21 I'd like to have this document marked as Shurberg
22 137.

23 JUDGE FRYSIAK: It may be so marked.

24 (The document referred to was
25 marked for identification as

1 Shurberg Exhibit 137.)

2 MR. COLE: And this document was received into
3 evidence at the bankruptcy proceeding as Exhibit Number 57.
4 And on that basis, I offer it here.

5 MS. SCHMELTZER: No objection.

6 JUDGE FRYSIK: Received.

7 (The document referred to,
8 having been previously marked
9 for identification as Shurberg
10 Exhibit 137, was received in
11 evidence.)

12 MR. COLE: Thank you, Your Honor. And next, I
13 would like marked for identification as Shurberg Exhibit
14 Number 138, a six-page document which is a letter on the
15 stationery of Frazier, Gross & Kadlec, Inc. It's two pages
16 in length plus some attachments. It's dated March 18, 1986
17 addressed to Mr. Ramirez from a William Neckdy Lincoln.

18 I would like this marked for identification as
19 Shurberg 138.

20 JUDGE FRYSIK: It may be so marked.

21 (The document referred to was
22 marked for identification as
23 Shurberg Exhibit 138.)

24 MR. COLE: And this is received into evidence in
25 the bankruptcy proceeding as Exhibit Number 223. And on

1 that basis, I offer it here.

2 MS. SCHMELTZER: No objection.

3 JUDGE FRYSIAK: Received.

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(The document referred to,
having been previously marked
for identification as Shurberg
Exhibit 138, was received in
evidence.)

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MR. COLE: And next, I have the three deposition
transcripts which are now part of the loose-leaf folders but
they were distributed yesterday.

14

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I'd like to have them marked for identification as
Shurberg Exhibit 139, the deposition of Dale R. Harburg,
which consists of a cover page and 59 pages of text. I'd
like to have that marked for Shurberg 139.

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JUDGE FRYSIAK: It may be so marked.

(The document referred to was
marked for identification as
Shurberg Exhibit 139.)

22

23

MR. COLE: Thank you. And I offer that into
evidence at this point.

24

25

MS. SCHMELTZER: I'm sorry, this is Harburg --

MR. COLE: This is Harburg 139.

1 MS. SCHMELTZER: 139. No objection, Your Honor.

2 JUDGE FRYSIAK: Received.

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(The document referred to,
having been previously marked
for identification as Shurberg
Exhibit 139, was received in
evidence.)

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MR. COLE: Thank you, Your Honor. Next, I have
the deposition transcript of Linda R. Bocchi.

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I would like that marked for identification as
Shurberg 140. It is a document which includes a cover and
then 32 pages of text.

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I should point out that Ms. Bocchi is the only
deponent thus far who has returned any corrections, and her
corrections -- her errata sheet is included along with the
32 pages of text. There are no substantial or substantive
corrections that were made, but that is the one that has
come in.

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And as I indicated in my cover letter yesterday,
to the extent that Ms. Harburg and Mr. Dudley provide any
corrections to me, I will forward them on to all the parties
and to Your Honor, so the record is complete.

1 But in any event, I'd like to have marked for
2 identification as Shurberg 140, the deposition transcript of
3 Linda Bocchi.

4 JUDGE FRYSIK: It may be so marked.

5

6 (The document referred to was
7 marked for identification as
8 Shurberg Exhibit 140.)

9 MR. COLE: Thank you, Your Honor. And I offer
10 that into evidence.

11 MS. SCHMELTZER: No objection.

12 JUDGE FRYSIK: Received.

13 (The document referred to,
14 having been previously marked
15 for identification as Shurberg
16 Exhibit 140, was received in
17 evidence.)

18 MR. COLE: Thank you, Your Honor. Finally, I'd
19 like to have marked for identification as Shurberg 141, the
20 deposition transcript of David Dudley, which consists of a
21 cover page and then 38 paginated pages. I should point out
22 that the final page is mislabeled. The signature page was a
23 notary public. Page number of her is 34, although if you'll
24 -- review of the preceding pages, indicates that it should
25 have been 38. But in any event, the document, I believe, is

1 38 pages in length.

2 And I would like that -- Mr. Dudley's deposition
3 transcript to be identified as Shurberg 141.

4 JUDGE FRYSIAK: It may be so marked.

5

6 (The document referred to was
7 marked for identification as
8 Shurberg Exhibit 141.)

9 MR. COLE: And I offer that into evidence at this
10 point.

11 MS. SCHMELTZER: No objection.

12 JUDGE FRYSIAK: Received.

13 (The document referred to,
14 having been previously marked
15 for identification as Shurberg
16 Exhibit 141, was received in
17 evidence.)

18 MR. COLE: Thank you, Your Honor. And that, with
19 the exception of the documents as to which we have deferred
20 offering for the time being pending a witness, constitutes
21 our direct case.

22 JUDGE FRYSIAK: Let's take a lunch recess. Be
23 back at quarter to two.

24 (Whereupon, the hearing was recessed, to reconvene
25 at 1:45 p.m. this same day, Wednesday, September 23, 1998.)

2 1:45 p.m.

5 MR. COLE: Yes. There was no word in my office
6 from Mr. Hart, and we were back here right around 1:30 and
7 nobody showed up. So, I'll try and get in touch with him
8 this afternoon and also call Mr. Bacon or Mr. Bacon's
9 counsel this afternoon, too, and try to get that set up,
0 too.

13 MARTIN HOFFMAN

16 JUDGE FRYSIAK: For the record, would you please
17 state your full name and address?

20 DIRECT EXAMINATION

21 BY MR. O'CONNELL:

24 A Yes.

25 Q And in that capacity, are you the licensee of
Heritage Reporting Corporation
(202) 628-4888

1 Television Station WHCT TV Hartford, Connecticut?

2 A Yes.

3 MR. O'CONNELL: Your Honor, I'd like to mark for
4 identification if we could Trustee Ramirez Tibbs Exhibit 1,
5 testimony of Martin W. Hoffman. I'm giving one for the
6 reporter.

7 JUDGE FRYSIK: It may be marked.

8 (The document referred to was
9 marked for identification as
10 Trustee Exhibit 1.)

11 MR. O'CONNELL: And one to the witness.

12 BY MR. O'CONNELL:

13 Q Mr. Hoffman, this is a document consisting of five
14 pages, Officer Declaration, also an appendix of two pages.
15 Are you familiar with this document?

16 A I am.

17 Q Is this your testimony in this proceeding?

18 A Yes.

19 Q Did you sign the declaration dated September 4,
20 1998 which was attached to your testimony?

21 A I did.

22 Q And is it your testimony that this testimony is
23 true and correct?

24 A It is.

25 MR. O'CONNELL: Your Honor, cross-examination?

1 JUDGE FRYSIAK: You're offering it? Any
2 objections?

3 MR. O'CONNELL: I'd like to offer it.

4 MR. COLE: Yes, Your Honor, I have a number of
5 relevance objections.

6 JUDGE FRYSIAK: All right.

7 MR. COLE: Paragraph 1, I have no problem with.
8 Paragraph 2 first sentence, I have no problem with. The
9 remainder of paragraph 2, that is: "Astroline was a
10 Massachusetts limited partnership and identifying managing
11 general partner" et cetera, I believe is conclusory. That
12 is, that's one of the issues -- one of the facts that's at
13 issue in this case. And I don't think it's appropriate for
14 Mr. Hoffman to be testifying to those lines because that is
15 what we're trying to prove or disprove in the case. So, I'm
16 not sure he is a competent witness to --

17 JUDGE FRYSIAK: You can cross-examine him on that.

18 MR. COLE: Fine. Paragraph 3, I have no problem
19 with. Paragraph 4, I believe to be irrelevant to the issues
20 in this case. It is a recitation of what the statutory duty
21 of a bankruptcy trustee is. And I don't understand why that
22 is relevant here.

23 JUDGE FRYSIAK: Okay.

24 MR. COLE: The same objection for paragraph 6.
25 That is, that the background concerning Mr. Hoffman's

1 investigation and so forth does seem to me to be irrelevant
2 to the issues in this case and has no place here and should
3 be stricken.

4 MR. O'CONNELL: Your Honor, I think the relevancy
5 was suggested this morning by the arguments that counsel
6 made about this Connecticut proceeding. I think the witness
7 is entitled to show the background of that proceeding.

8 MR. COLE: Well, that may be. As I understand
9 what is being shown here is Mr. Hoffman's rationale or
10 motivation for taking whatever positions he took in
11 Hartford. Well, it seems to me that, regardless of the
12 motivations behind it, he took certain positions before the
13 Court, so his positions are a matter of record in the
14 pleadings which we've offered in our case. And whether he
15 took them because he really believed them, or whether he
16 took them because somebody told him to take them, or for
17 some other reason, is irrelevant. He took the positions up
18 in the bankruptcy court. And that's why paragraph 6 is
19 irrelevant here.

20 MR. O'CONNELL: Do you want to hear more
21 arguments, Your Honor?

22 JUDGE FRYSIK: Go ahead.

23 MR. O'CONNELL: I don't think the witness's plans
24 with respect to that litigation and the rationale for those
25 plans is at all irrelevant. And if he's going to be cross-

1 examined at all about those proceedings, which I anticipate,
2 I think he should be entitled, given his direct testimony,
3 his rationale for the participation in that proceeding.

4 JUDGE FRYSIAK: I've read this information in the
5 exhibits that you presented.

6 MR. COLE: About Mr. Hoffman?

7 JUDGE FRYSIAK: This information that he's
8 referring to here, that he was advised. Pursuant to the
9 advice, he made certain acts. Now, you can cross-examine
10 him for whatever value it may present, but I think it's
11 worth at least the background information of the Trustee.

12 MR. COLE: Well, in that event, Your Honor,
13 paragraph 12 and paragraph 13 appear to be primarily
14 summaries or quotations from the opinions of the various
15 Connecticut courts, Judge Kreshevsky in the Bankruptcy Court
16 and the District Court and the Court of Appeals. Those
17 opinions in their entirety, I believe, are being offered by
18 the joint parties. It seems to me that the opinions speak
19 for themselves, and Mr. Hoffman's summaries or selections or
20 excerpts from them are unnecessary in the record.

21 MR. O'CONNELL: Your Honor, this is a very brief
22 section. I don't think it at all encumbers the record for
23 Mr. Hoffman to provide it as part of his background.

24 MR. TOPEL: Your Honor, it's a predicate to the
25 next paragraph in which he indicates that he appealed the

1 decision. Mr. Cole has, over objection, submitted into the
2 record the Appellate brief. So, it's entirely proper to
3 have Mr. Hoffman's testimony about the context of the entire
4 litigation including the context in which that brief was
5 submitted.

6 MR. COLE: I withdraw my objection, Your Honor.

7 JUDGE FRYSIK: I was about to say I'll let it in
8 for whatever it's worth. Okay?

9 MR. COLE: Well, then I have no further
10 objections.

11 JUDGE FRYSIK: I'll receive Trustee Exhibit 1.

12 (The document referred to,
13 having been previously marked
14 for identification as Trustee
15 Exhibit 1, was received in
16 evidence.)

17 JUDGE FRYSIK: The witness is ready for cross-
18 examination.

19 MR. COLE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. COLE:

22 Q Good afternoon, Mr. Hoffman. As you and I have
23 known each other for several years, I am Harry Cole, counsel
24 for Mr. Shurberg. But I state that for the record.

25 A Afternoon, Mr. Cole.

1 Q Mr. Hoffman, in paragraph 5 of your testimony, you
2 state that the property of the bankruptcy estate includes,
3 among other things, WHCT's physical assets.

4 Do you see where it says that in the second line
5 of page 2?

6 A Yes.

7 Q What do you mean by physical assets?

8 A Well, I mean the -- the tower site -- the lease to
9 the tower site, number one. The lease to the tower site was
10 sold by the Trustee at auction to Two If By Sea for a
11 substantial sum of money.

12 Q So, it was sold?

13 A Yes, it was. It was sold to Two If By Sea.

14 Q So, that's the -- the estate does not include that
15 any more. Is that correct?

16 A That's true. It's been converted to cash.

17 Q Okay. And that's just a leasehold interest.

18 A A leasehold interest.

19 Q Are there any physical assets?

20 A There is the license itself.

21 Q And that's referred to later in this sentence. So
22 again, let me refer to your testimony. It says: "The
23 estate includes HCT's physical assets, the FCC license and
24 any claims under lawsuits that Astroline might have
25 available to it."

1 Is that right?

2 A Yes. And there are -- there are lawsuits in
3 existence at the time.

4 Q Right. Now -- I'm sorry. Were you finished?

5 A There are lawsuits pending at this time. Like
6 there is a lawsuit pending against Mr. Shurberg.

7 Q Okay. Now, let's go back to physical assets.
8 What other physical assets by the leasehold interest are
9 there?

10 A As I reported, the FCC license, and physical other
11 than that -- you mean physical like desk chairs, stuff like
12 that?

13 Q Mr. Hoffman, this is your language, isn't it?

14 A Right.

15 Q That's what I want to know. What did you mean by
16 physical assets?

17 A I meant the physical asset. I meant the tower
18 site -- the lease to the tower site. I meant the license
19 itself, and I meant the lawsuits.

20 Q But the tower site is no longer part of the
21 bankruptcy estate. Isn't that correct?

22 A The lease itself. We're still leasing.

23 Q But I thought you told me that you sold the lease
24 to Two If By Sea?

25 A We sold the lease to Two If By Sea, but we're

1 still leasing back -- we have what is called an agreement
2 where Two If By Sea is operating the station, and I am the
3 licensor -- licensee. Timeshare agreement.

4 Q Have you, as the Trustee, ever acquired as a --
5 any physical assets for use in connection with this station?

6 A No.

7 Q Do you recall that you were examined under oath in
8 the bankruptcy proceeding on April 28, 1995?

9 A I've been examined under oath many times.

10 Q Well, let me show you a copy of the transcript of
11 that proceeding. Unfortunately, I only have one copy.

12 MR. TOPEL: Could you then show us the --

13 MR. COLE: Sure --

14 MR. TOPEL: -- places that you're going to ask the
15 witness about?

16 MR. COLE: Sure. And for the record, I am looking
17 at a document which would be the transcript of -- an
18 appearance by Mr. Hoffman in the Bankruptcy Court in
19 Hartford on April 28, 1995. It's Volume 5 of the Bankruptcy
20 Court hearing record. And I'm going to be looking at 152 to
21 153. And let me show counsel.

22 And I'm going to ask Mr. Hoffman to review that
23 language and I will read it into the record and ask him if
24 it was accurate.

25 Your Honor, may I approach the witness?

1 JUDGE FRYSIAK: Yes.

2 MR. COLE: Thank you. Mr. Hoffman, let me direct
3 your attention to page 152 of this transcript, which again
4 is Volume 5 of the Bankruptcy Court. And I'm going to read
5 aloud and I want you to follow along with me, and then I'm
6 going to ask you if I've read this accurately. And this is
7 direct examination of you.

8 And at line 5, you were asked:

9 "Q Are you familiar with the assets of the
10 estate, Mr. Hoffman?"

11 "A As they are now?"

12 "Q As they are now."

13 "A Yes, they are."

14 "Q Tell the Court what the assets consists of."

15 "A It consists of cash in the amount of
16 approximately \$292,000 at this time."

17 "Q Any other assets besides?"

18 "A Yes. It consists of a contract with Mr.
19 Parker and his corporation that in the event that he should
20 have the license that -- of Astroline Communications
21 transferred to him by the FCC, that upon that being
22 completed, he will pay to the Trustee \$210,000.

23 In addition to that, there are various lawsuits.
24 There is a lawsuit pending against Astroline Company,
25 Astroline of Connecticut, Inc., which was brought by the

1 Trustee and the Trustee has taken appeal on that, but in
2 that --"

3 "Q The Trustee lost that case?"

4 "A The Trustee lost that case, and it's on
5 appeal in the district court. In addition to that, there is
6 the pending lawsuit."

7 "Q This lawsuit?"

8 "A This lawsuit."

9 "Q Right."

10 "A And that would be the -- constitute the
11 assets of the estate."

12 Did I read that correctly?

13 THE WITNESS: Yes.

14 BY MR. COLE:

15 Q Now, you should feel free to read more of that
16 transcript if that would assist you or if you think that is
17 relevant.

18 A Well, it -- well, cash. It does still consist of
19 cash. And at that particular time as you pointed out, I
20 guess we had disposed of the leasehold interest in the tower
21 site and converted that into cash.

22 Now, we had sold the right to the license to Mr.
23 Power -- Parker on Two If By Sea subject to FCC approval.
24 And that's still pending. And at that time, it was
25 supposedly for \$210,000. Since that time, it's changed.

1 And then at that time, there was a lawsuit pending
2 against Astroline Company. And as I kept on saying -- and
3 that was on appeal. And at that time -- wait a minute. No,
4 then it was just on appeal to the District Court. This was
5 in -- what year was this?

6 Q '95.

7 A '95. It was on appeal to the District Court.
8 Then, after that it went to the Second Circuit Court of
9 Appeals. And since -- subsequent to that time, the lawsuit
10 of -- there's a lawsuit against Mr. Shurberg.

11 Q Okay.

12 A And at that time -- well, at that time, there was
13 not the time purchase agreement. That came about later on.
14 That's what we have now. But I think that's pretty --

15 Q But that testimony as you read it in 1995, that
16 was accurate --

17 A I think that was accurate at that time except for
18 the corrections that I've made.

19 MR. COLE: Your Honor, I move to strike the
20 reference to WHCT's physical assets because I think the
21 testimony that we've heard indicates and establishes there
22 are no physical assets of the station.

23 MR. O'CONNELL: To the contrary, Your Honor. I
24 think the witness testified as to what his understanding of
25 the physical assets were when he made reference to the

1 leasehold interest.

2 MR. COLE: Which he's testified repeatedly, Your
3 Honor, they sold apparently prior to 1995.

4 JUDGE FRYSIK: What about cash? Is cash a
5 physical asset?

6 MR. COLE: If we understand the term cash to be
7 physical asset and that's all he's testified to, then I can
8 live with that.

9 JUDGE FRYSIK: Well --

10 BY MR. COLE:

11 Q Am I correct, Mr. Hoffman, that you're viewing the
12 term cash as a physical asset?

13 A Yes.

14 Q And --

15 A I'm also -- can I answer?

16 Q Sure.

17 A I also concerned that the leasehold interest was a
18 physical asset, too, but it was converted to cash.

19 MR. COLE: Yes. But again, Your Honor, it was
20 converted some time ago.

21 JUDGE FRYSIK: Well, it's cash, though.

22 MR. COLE: Okay. But it is cash.

23 JUDGE FRYSIK: Right.

24 MR. COLE: So, besides cash, are there any
25 physical assets?

1 JUDGE FRYSIAK: Then, there's the license.

2 MR. COLE: Yes.

3 JUDGE FRYSIAK: And there are other claims.

4 THE WITNESS: And the lawsuits. And the time
5 brokerage agreement, too. That came about later. I
6 considered that a physical asset because it converts to cash
7 every month.

8 JUDGE FRYSIAK: So, your motion is denied.

9 MR. COLE: I have no further questions, Your
10 Honor.

11 JUDGE FRYSIAK: Any redirect?

12 MR. O'CONNELL: One moment, please. No, Your
13 Honor.

14 JUDGE FRYSIAK: All right. Mr. Hoffman, thank you
15 very much.

16 THE WITNESS: Thank you, Your Honor.

17 JUDGE FRYSIAK: You are excused.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 JUDGE FRYSIAK: What's up?

21 MR. COLE: Well, Your Honor, Mr. Hart's not here.
22 Mr. Bacon, I don't think we'll get here till Monday, I
23 think, at the earliest. Mr. Ramirez isn't due in until
24 tomorrow morning, right? Are we starting at 9:00
25 tomorrow -- is that --

1 MS. SCHMELTZER: I'll start as early as Your Honor
2 wants to start.

3 JUDGE FRYSIAK: It's all right with me.

4 MS. SCHMELTZER: Eight-thirty would be fine, too.

5 JUDGE FRYSIAK: So, we have nothing for this
6 afternoon?

7 MR. COLE: Well, you have three other exhibits.
8 If you want to put them in now, you can put them in, the
9 non-Ramirez exhibits because --

10 MS. SCHMELTZER: Sure --

11 MR. COLE: -- there's nothing to cross there, so
12 it's fine with me.

13 JUDGE FRYSIAK: Tomorrow we have Mr. Ramirez,
14 maybe Mr. Hart?

15 MR. COLE: Yes.

16 JUDGE FRYSIAK: Anything else?

17 MR. COLE: No, no. I mean, right now the
18 witnesses are Hart, Ramirez and Bacon and Davenport.
19 Davenport is Monday morning. Bacon will probably be Monday,
20 possibly Thursday, and Ramirez is tomorrow. And so, if we
21 get Hart on tomorrow or even Friday --

22 JUDGE FRYSIAK: Friday is free?

23 MS. SCHMELTZER: Your Honor, I could go ahead and
24 introduce our exhibits 3, 4 and 5 if you'd like to get that
25 done now.

1 JUDGE FRYSIK: All right.

2 MS. SCHMELTZER: I'd first like to have marked for
3 identification as Trustee Ramirez Tibbs Exhibit 3, a
4 document entitled, "The Connecticut Bankruptcy Court
5 Decisions and Rulings on Appeal."

6 (The document referred to was
7 marked for identification as
8 Trustee Exhibit 3.)

9 MS. SCHMELTZER: And this is a document that --
10 let me just go off the record for a minute, Your Honor.

11 JUDGE FRYSIK: All right.

12 (Discussion held off the record.)

13 MS. SCHMELTZER: A three-page exhibit, Your Honor.
14 And I apologize. This was intended to be Bates-stamped, and
15 it's partially Bates-stamped, but not correctly.

16 So, it is a 23-page document. The first page of
17 this is the decision of the United States Bankruptcy Court
18 District of Connecticut, released on October 24, 1995.
19 Following that is a summary order of the United States Court
20 of Appeals for the Second Circuit. And following that is a
21 ruling on appeal from the bankruptcy court in the United
22 States District Court, District of Connecticut.

23 And I might just say that the District Court
24 actually preceded the Second Circuit decision. The Second
25 Circuit decision was issued on April 17, 1997. And the

1 District Court decision was released on August 9 or actually
2 filed with the Court on August 12, 1996.

3 And I would ask, Your Honor, that Trustee Ramirez
4 Tibbs Exhibit 3 -- I'm sorry. Has it been identified for
5 the record?

6 JUDGE FRYSIK: Pardon?

7 MS. SCHMELTZER: Has it been identified for the
8 record?

9 JUDGE FRYSIK: Yes. It's been marked for
10 identification.

11 MS. SCHMELTZER: I would ask that this be received
12 in evidence.

13 MR. COLE: No objection.

14 JUDGE FRYSIK: It is received without objection.

15 (The document referred to,
16 having been previously marked
17 for identification as Trustee
18 Exhibit 3, and was received in
19 evidence.)

20 MS. SCHMELTZER: The next exhibit, Your Honor, is
21 Exhibit 4. It's a two-page document, which is the
22 declaration of Lee Simowitz. I would ask that that be
23 marked for identification as Trustee Ramirez Tibbs Exhibit
24 4.

25 JUDGE FRYSIK: It may be marked.

1 (The document referred to was
2 marked for identification as
3 Trustee Exhibit 4.)

4 MS. SCHMELTZER: And Your Honor, I would ask that
5 that be received in evidence.

6 MR. COLE: No objection.

7 JUDGE FRYSIK: All right. It's received without
8 objection.

9 (The document referred to,
10 having been previously marked
11 for identification as Trustee
12 Exhibit 4, was received in
13 evidence.)

14 MS. SCHMELTZER: And Trustee Ramirez Tibbs Exhibit
15 5, Your Honor, is the declaration of Kimberly D. Krolley.
16 And that is a one-page document.

17 JUDGE FRYSIK: It may be marked.

18 (The document referred to was
19 marked for identification as
20 Trustee Exhibit 5.)

21 MS. SCHMELTZER: And I ask that that be received
22 in evidence.

23 MR. COLE: No objection.

24 JUDGE FRYSIK: Received without objection.

25

1 (The document referred to,
2 having been previously marked
3 for identification as Trustee
4 Exhibit 5, was received in
5 evidence.)

6 MS. SCHMELTZER: Our Exhibit 2, Your Honor, will
7 be sponsored by Mr. Ramirez. And I anticipate that Mr.
8 Ramirez will have some additional -- not oral testimony, but
9 additional documents that he will be sponsoring as well.

10 MR. COLE: Additional beyond the ones that have
11 been exchanged?

12 MS. SCHMELTZER: Yeah. But everything's been
13 turned over in discovery.

14 MR. COLE: Can you give me an idea of what they
15 are?

16 MS. SCHMELTZER: Well, some -- just a variety of
17 documents that have been exchanged in discovery.

18 JUDGE FRYSIK: Okay.

19 MR. COLE: Your Honor, could I ask for a little
20 bit more clarification than a variety of documents because
21 we've seen a lot of documents. The general -- what areas
22 will --

23 MS. SCHMELTZER: Well, there will be some -- it's
24 either going to be Mr. Ramirez or Mr. Davenport that will
25 sponsor these, probably Mr. Ramirez. But the financial

1 statements -- excuse me. The Arthur Andersen-audited
2 accounting statements, which actually, I think you could
3 probably stipulate to because they were bankruptcy exhibits.
4 They were exhibits in the bankruptcy proceeding.

5 MR. COLE: Yes.

6 MS. SCHMELTZER: There are additional documents
7 that go to Mr. Ramirez's control of the day-to-day
8 operations of the station.

9 MR. COLE: There are more beyond the financial
10 statements that go to the --

11 MS. SCHMELTZER: That's right.

12 MR. COLE: And what are the ones that go --

13 MS. SCHMELTZER: Well, things like program
14 licensing agreements and his communications with program
15 suppliers, his communications with other entities that did
16 day-to-day business with the station.

17 MR. COLE: Well, I'll have to look at them when
18 they arrive.

19 JUDGE FRYSIK: Are they available now?

20 MS. SCHMELTZER: They're being put together. The
21 financial statements, however, are bankruptcy court
22 exhibits.

23 MR. TOPEL: Most of the others are bankruptcy
24 court exhibits, too, I would say.

25 MR. COLE: I don't know. I'll have to see them.

1 JUDGE FRYSIAK: All right.

2 MR. COLE: If I could just request, Your Honor,
3 that if they could at least get me a list of the documents
4 with maybe the bankruptcy court cross reference numbers, so
5 I can at least see -- get an idea tonight what they look
6 like, that would be useful.

7 MS. SCHMELTZER: The financial statements, I
8 believe are 11, 12, 13 and 14. They're in thereabouts.
9 Actually, I can tell you exactly where they are, I think.
10 14 -- I think it's 14 through 17.

11 MR. COLE: Seventeen?

12 MS. SCHMELTZER: Uh-huh.

13 MR. COLE: Okay. And the other documents, do you
14 know, or can you give me a list of those where they appear
15 in the bankruptcy record?

16 MS. SCHMELTZER: I'll see if I can get copies for
17 you.

18 MR. COLE: Again, I don't need the copies tonight,
19 as long as -- because I presumably have copies of most
20 everything in my office. I'm just looking for a reference
21 so I can at least look at them tonight.

22 MS. SCHMELTZER: Uh-huh.

23 MR. COLE: Thank you. I have nothing further,
24 Your Honor.

25 JUDGE FRYSIAK: All right. As far as Mr. Hart,

1 what if he shows tomorrow at nine, would he go first?

2 MS. SCHMELTZER: That's a --

3 MR. COLE: Well, Your Honor, I mean, the parties I
4 thought had an agreement that we would try to accommodate
5 out of town people, folks who were traveling. And I'm
6 perfectly happy to have Mr. Ramirez, who I gather is
7 traveling from somewhere --

8 MS. SCHMELTZER: He is --

9 MR. COLE: -- to do him.

10 JUDGE FRYSIK: So, Hart will follow Ramirez?

11 MR. COLE: Yes. And again, I'll try to track Hart
12 down, either by phone or if nothing else tag him by a fax,
13 and tell him that the current schedule is we'd like to have
14 him in Friday morning at nine o'clock, on the theory that we
15 can finish Mr. Ramirez tomorrow. And that gives us all day,
16 if necessary, to do Mr. Ramirez or not, as the case may be,
17 and then, start up fresh with Hart Friday morning.

18 Is that acceptable, Your Honor?

19 JUDGE FRYSIK: Well, I would hate to come here
20 Friday and not have him show.

21 MR. COLE: You and me both.

22 JUDGE FRYSIK: So, something definite.

23 MR. COLE: Okay.

24 JUDGE FRYSIK: In other words, we don't have a
25 follow-up session if Hart doesn't show.

1 MR. COLE: Right. Okay, well, let me find out
2 from him -- do what I can in terms of tracking him down
3 tonight, and report back tomorrow morning to everyone so
4 that we'll be able to schedule Friday one way or another.

5 JUDGE FRYSIK: Well, I would like to have some
6 back-up witnesses in case he doesn't show for -- let's say,
7 we can have him for Monday.

8 MR. COLE: Well, at this point --

9 MS. SCHMELTZER: Monday's pretty full, I think.

10 MR. COLE: Monday's getting full because we have
11 Mr. Davenport from Arthur Andersen and ideally, Mr. Bacon
12 coming down from Boston. Both of them, with Mr. Davenport
13 in the morning and Mr. Bacon in the afternoon, assuming his
14 schedule is -- he's available.

15 MS. SCHMELTZER: The alternative is if Mr. Hart
16 can make it Monday afternoon, perhaps Mr. Bacon can make it
17 Thursday.

18 MR. COLE: Thursday, yes. But it may be that
19 Friday is going to be an off day, but I will do what I can
20 to get Mr. Hart here.

21 JUDGE FRYSIK: All right. Well, will you convey
22 to Mr. Hart my sentiments?

23 MR. COLE: I certainly will.

24 JUDGE FRYSIK: We stand adjourned until nine
25 o'clock.

1 (Whereupon, at 2:36 p.m., the hearing recessed, to
2 reconvene at the following day, Thursday, September 24,
3 1998, at 9:00 a.m.)

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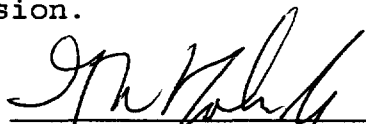
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CASE TITLE: In Re: Applications of Martin Hoffmann
HEARING DATE: September 23, 1998
LOCATION: Washington, DC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 9/23/98




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